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In the Supreme Court of the United States

OCTOBER TERM, 1959

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

MORRISON-KNUDSEN COMPANY, INC., ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

STUART ROTHMAN,
General Counsel,
DOMINICK L. MANOLI,
Associate General Counsel,
MORTON J. CORIN,
Assistant General Counsel,
National Labor Relations Board,
Washington 25, D.C.

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CITATIONS

Cases:

Local 60, United Brotherhood of Carpenters v. *National Labor Relations Board*, No. 846, this Term 7

National Labor Relations Board v. *Local 357, International Brotherhood of Teamsters*, No. 929, this Term 7

National Labor Relations Board v. *Local Union No. 55, Sheet Metal Workers' International Association*, No. 937, this Term 7

Statute:

National Labor Relations Act, as amended (61 Stat. 136, 65 Stat. 601, 29 U.S.C. 151, *et seq.*)

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No. ——

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

MORRISON-KNUDSEN COMPANY, INC., ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The National Labor Relations Board prays that a writ of certiorari issue to review that part of the decision of the United States Court of Appeals for the Second Circuit entered in the above-entitled case on March 2, 1960, which denies enforcement of the reimbursement provisions of the Board's order.

OPINIONS BELOW

The opinion of the Court of Appeals (Appendix, pp. 9–16, *infra*) is reported at 275 F. 2d 914. The findings of fact, conclusions of law, and order of the Board (R. 275–282, 223–252)[1] are reported at 123 NLRB No. 12.

JURISDICTION

The decree of the Court of Appeals (Appendix, pp. 17–24, *infra*) was entered on April 14, 1960. The juris-

[1] "R." references are to the Appendix to petitioners' brief in the court below.

diction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Board, as a remedy for a hiring arrangement between the employer and the union which unlawfully accords preference in referral for employment to union members and exacts a special permit fee from non-members, may require that the employees be reimbursed for all dues and other monies which they paid to the union under that arrangement.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 65 Stat. 601, 29 U.S.C. 151, *et seq.*) are as follows:

> SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).
>
> * * * * *
>
> SEC. 8. (a) It shall be an unfair labor practice for an employer—
>
> (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;
>
> * * * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective-bargaining unit covered by such agreement when made * * * and (ii) unless following an election held as provided in section 9(e) within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: * * *.

* * * * *

SEC. 10(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such

affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: * * *

STATEMENT

A. THE BOARD'S FINDINGS

The three respondents were engaged in various phases of construction of the St. Lawrence Seaway and Power Project in the vicinity of Massena, New York.[2] This is within the territorial jurisdiction of Local 545 of the International Union of Operating Engineers (R. 224–225; 3–13, 218–219). None of the respondents maintained an employment office of its own, each relying largely upon Local 545 to supply it with employees through the Local's hiring hall at Massena. Many of those supplied were members of the Local; most of the remainder were members of other locals of the International Union; and a few were not members of any union. (R. 225–226, 230–231; 60–64, 66, 96–98, 157, 158.)

Local 545 followed the practice of giving preference in referral to its own members. Thus, when Edward Morrison, a college student seeking summer employment, applied at the union hiring hall for a job as an oiler, he was told by a business representative of Local 545 that there were no jobs open, that there were "all kinds of book men" (i.e., union mem-

[2] Two of the respondents are joint ventures. One is referred to in the record as Robinson Bay, and the other as Massena Intake (R. 3–13). Morrison-Knudsen is the "sponsor" for each of the joint ventures (R. 25). The third respondent is a corporation, referred to as Selby.

bers) looking for work who "had to come first" (R. 233; 119–120, 127–128). Thereafter, while Morrison was in the hiring hall waiting, he stepped forward when Union agent Bishop called for an oiler. Bishop, however, refused to "clear" Morrison when he learned that he was not a "book man." Later, Bishop again called for an oiler. A "book man," who had come in after Morrison, produced his book on Bishop's inquiry, and was given a referral slip. (R. 233; 120–122.)

Similarly, Harold Blum, a member in good standing of Local 66 of the Operating Engineers, came to Massena about March 20, 1956 and asked to have his name placed on the out-of-work list. Union agent Colville told him that, "We have 545 men, they have to go to work first," but added that Blum should come back April 1 and he would be taken care of. (R. 234; 141.) Blum was referred on April 1, but first he had to show his book (evidencing membership in one of the locals of the International), and pay the weekly permit fee of $2.50 (R. 234; 139–145, 147–149, 178–179).

It was the practice of Local 545 to issue permits to, and collect a permit fee or "dobie" of $2.50 per week from, both non-union members and members of other locals of the International (R. 235; 80–91, 90–91, 125–127, 136–137, 142–143, 180–181, 184). By contrast, the dues for members of Local 545 were $4.00 per month for oilers, and $7.00 per month for operating engineers (R. 84, 89).

B. THE BOARD'S CONCLUSIONS AND ORDER

The Board found that respondents maintained in effect an exclusive hiring-hall arrangement and practice with Local 545, under which nonmembers of the Local were discriminated against in that Local 545 gave preference in referral for employment to its own members and required nonmembers to pay weekly fees for work permits. The Board concluded that, by such arrangement, respondents encouraged union membership in violation of Section 8(a) (3) and (1) of the Act (R. 226–227).[3]

The Board's order (R. 279–282) requires respondents to cease and desist from the unfair labor practices found, and from in any other manner restraining or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act. Affirmatively, respondents are directed to reimburse present and former employees for all fees, dues, and other monies which they were required to pay to Local 545 by virtue of the unlawful hiring arrangement, and to post appropriate notices.

C. THE DECISION OF THE COURT OF APPEALS

The Court of Appeals sustained the Board's unfair labor practice findings and granted enforcement of its order, except for that portion requiring reimbursement of fees, dues and other monies paid to Local 545. The court stated (Appendix, pp. 15–16, *infra*):

---

[3] Although a complaint was also issued against Local 545 and its International, this was withdrawn when both unions entered into settlement agreements providing that they would discontinue their unfair labor practices (R. 248).

The remedy would require the employers to pay back not only the permit fees paid by non-union workers and members of other locals, but to reimburse long standing members of Local 545 for the dues paid by them. There is no evidence of any kind in the record to suggest that, but for the illegal conduct of the employers and the union, any of the Local 545 members would have resigned from the local and thereby avoided payment of union dues. * * *

Furthermore, even as applied to the members of other locals and those men not members of any union, we think the remedy is unfair. The order requires the employers, who at most received indirect financial benefit from the unlawful practices, to pay back all of the dues, permit fees and initiation fees collected by the union local. At the same time the primary beneficiary of the unlawful conduct and undeniably the most culpable of the parties, Local 545, has been permitted to retain in its treasury the funds unlawfully exacted by it. In this respect the present case is distinguishable from *Virginia Electric & Power Co.* v. *N.L.R.B.* [319 U.S. 533], where the company was required to reimburse employees for dues it had itself unlawfully exacted through the company union as a condition of employment.

REASONS FOR GRANTING THE WRIT

This case presents the same question as that involved in Nos. 846, 929 and 937,[*] viz., whether the

[*] *Local 60, United Brotherhood of Carpenters* v. *National Labor Relations Board; National Labor Relations Board* v. *Local 357, International Brotherhood of Teamsters; National Labor Relations Board* v. *Local Union No. 85, Sheet Metal Workers' International Association.*

Board, as a remedy for hiring practices which unlawfully encourage union membership, may require that all monies paid by the employees to the union while subjected to those practices be repaid to them. As shown in the Board's petition in No. 929, the question is of importance in the administration of the Act, and there is a conflict of decisions on the point. In order to preserve the Board's position on the issue in the instant case, a review of the decision of the court below must likewise be requested.

CONCLUSION

For these reasons, the present petition should be granted, or, in the alternative, held in abeyance pending a decision on the question in Nos. 846, 929 and 937.

Respectfully submitted.

STUART ROTHMAN,
General Counsel,
DOMINICK L. MANOLI,
Associate General Counsel,
NORTON J. COME,
Assistant General Counsel,
National Labor Relations Board.

I authorize the filing of this petition for a writ of certiorari.

J. LEE RANKIN,
Solicitor General.

MAY, 1960.

APPENDIX

United States Court of Appeals

For the Second Circuit

No. 78—October Term, 1959. (Argued December 11, 1959—Decided March 2, 1960.) Docket No. 25613

MORRISON-KNUDSEN COMPANY, INC., WALSH CONSTRUCTION COMPANY AND PERINI-QUEBEC, INC., JOINT VENTURERS DOING BUSINESS AS ROBINSON BAY LOCK CONSTRUCTORS; MORRISON-KNUDSEN COMPANY, INC., B. PERINI & SONS, INC., WALSH CONSTRUCTION COMPANY, AND UTAH CONSTRUCTION COMPANY, A JOINT VENTURE AND SELBY DRILLING CORP., PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

Before LUMBARD, Chief Judge, SWAN and FRIENDLY, Circuit Judges

On petition for review of a decision and order of the National Labor Relations Board and cross-petition for enforcement of said order.

GERALD DEGARMO,
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THOMAS J. MCDERMOTT,
Associate General Counsel,
MARCEL MALLET-PREVOST,
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National Labor Relations Board.

SWAN, *Circuit Judge:*

Petitioners seek review of a decision and order of the National Labor Relations Board, issued March 4, 1959 and reported as 123 NLRB No. 12, and the Board by cross petition seeks enforcement of its order.

The three petitioners were engaged respectively in construction work upon the St. Lawrence Seaway and Power Projects in the vicinity of Massena, N.Y. and within the "territorial jurisdiction" of Local 545, International Union of Operating Engineers, under contracts with either the United States (Corps of Army Engineers) or the Power Authority of the State of New York. Concededly, they were engaged in commerce as defined in the National Labor Relations Act, 29 U.S.C.A. § 152, and the Union and its Local were labor organizations. Two of the three petitioners did business as joint venturers; they are referred to in the Trial Examiners Intermediate Report as Robinson Bay and Massena Intake. None of the three maintained an employment office of its own, and each relied largely upon Local 545 to supply it with employees through the Local's hiring hall at Massena. Many of those supplied were members of the Local; most of the remainder were members of other locals of the International Union, and a few were not members of any union.

The Board found, in agreement with the Trial Examiner, that since March 1, 1956, the petitioners "have engaged in unfair labor practices proscribed by Section 8(a) (3) and (1) of the Act by maintaining in effect an exclusive hiring hall arrangement and practice with Local 545 and International Union of Operating Engineers under which nonmembers of Local 545 were discriminated against by giving preference in referral for employment to members and then to mem-

bers of other locals and by requiring of nonmembers the payment of weekly fees for work permits as evidence of the Local's consent to their employment, thereby encouraging membership in Local 545."[1] The Board further held, following its recent *Mountain Pacific* case,[2] that an employer may enter into an exclusive hiring arrangement with a union provided adequate safeguards against discrimination are prescribed, but found that the petitioners had not provided such safeguards. The Board's order contains the usual cease and desist provisions and, in disagreement with the trial examiner, directs petitioners to reimburse all present and former employees who have unlawfully been required to pay a work permit fee, initiation fees, dues and other moneys to Local 545.[3] Petitioners contend that each of the Board's findings and conclusions is erroneous as not stating a violation on the part of petitioners of section 8(a) (1) and (3) of the Act and as not being supported by substantial evidence on the record considered as a whole. They also contend that, in any

[1] The pertinent provisions of section 8 of the Act, 29 U.S.C.A. 158, provide:

"(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title;

* * * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: * * *"

[2] *Mountain Pacific Chapter of the Associated General Contractors, Inc. et al.*, 119 NLRB 893. On appeal this doctrine was rejected by the Ninth Circuit, 270 F. 2d 425.

[3] Although a complaint was issued against them, settlement agreements were made with Local 545 and the International Union of Operating Engineers which provided that each would discontinue its unfair labor practices, and contained no reimbursement provision. The petitioners were offered a similar settlement but declined it.

event, the provision for reimbursement is punitive rather than remedial, and should not be enforced.

In our opinion the evidence in the record as a whole is sufficient to sustain the Trial Examiner's and the Board's conclusion that the hiring hall arrangement and practice was operated in a discriminatory manner in violation of section 8(a) (1) and (3) of the Act. Harold Blum, a member of another local of the International who applied for work during a slack season, was told by Coville, a business agent of Local 545: "We have 545 men, they have to go to work first." Later, after work had become more plentiful, Blum applied again and Coville gave him a work slip after requiring him to show his local book and to pay $2.50 as a weekly permit fee. Morrison, a college student who was not a member of any union and applied for summer work as an oiler, was told by Coville that "book men," meaning union members, had to come first. We agree with counsel for the Board that the experience of Blum and Morrison should be regarded as specific examples of how Local 545 was operating its hiring hall, rather than as isolated instances of discrimination. The testimony of other witnesses, both those called by the General Counsel and those called by the petitioners, shows the existence of a general policy of preferring members of Local 545, as well as a requirement (not always strictly enforced) that nonmembers pay the weekly license fee, called "dobie." When either Robinson Bay or Massena Intake needed men, it would notify Local 545, and men sent by the Local with referral slips would be hired. If a qualified man applied at the project for work he would be told to obtain a referral slip from the Local, or, if the hiring hall was closed, as on Saturdays, permission to hire him would be obtained from the

union steward. A similar procedure was followed by Selby, as appears from the testimony of Mr. Kangas.

The petitioners contend that giving preference to members of Local 545 over members of other locals of the International is not a violation of the Act. We disagree. No precise authority on the point has been discovered but *N.L.R.B.* v. *International Brotherhood*, 2 Cir. 232 F. 2d 393, cert. den. 352 U.S. 909, and *N.L.R.B.* v. *Daboll*, 9 Cir. 216 F. 2d 143, cert. den. 348 U.S. 917, tend to refute the petitioners' argument. The literal words of the statute also lend support to the view that encouragement of membership in a particular local is unlawful. The dues for members of Local 545 were $4.00 per month for oilers, and $7.00 per month for operating engineers, while the license fee required of members of other locals and of non-union men was $2.50 per week, that is $10.00 a month. The natural tendency of such differential is to encourage membership in Local 545.[4] Nor can the fact that the constitution of the International required that Local to collect a license fee from members of other locals make a collection of it lawful.[5]

While there is some dispute as to the extent of the petitioners' knowledge of the Local's discriminatory practices, it seems clear that at least they knew of the collection of "dobie."[6] But regardless of the extent of their knowledge we agree with the Board that an employer may not avoid liability for violations of the Act by the hiring hall when he has turned over to it

[4] Mr. Coville testified that "since that time [the first two years] we have had a lot of applications" for membership.

[5] *N.L.R.B.* v. *International Brotherhood*, 2 Cir. 232 F. 2d 393, 396, cert. den. 352 U.S. 909.

[6] Mr. Armitage testified: "I told all stewards in all crafts that they weren't to take up any subscription, donation, dues, assessment, dobie, or any such thing on the job," during working hours. App. 165–166.

the task of supplying the men to be employed. The Local acted as agent for the petitioners in selecting the men to be hired. Its discriminatory acts, which unlawfully encouraged membership in Local 545, are properly chargeable to the agent's principal as discriminatory acts by it. *N.L.R.B.* v. *George D. Auchter Co.*, 5 Cir. 209 F. 2d 273, 277; *N.L.R.B.* v. *F. H. McGraw & Co.*, 6 Cir. 206 F. 2d 635, 639–640.

Since we have concluded that the findings of discrimination are supported by the evidence, it is unnecessary to pass upon the Board's contention based upon the controversial issue raised by the *Mountain Pacific* case.[7]

We turn now to the propriety of the remedy. The cease and desist provisions of the order should be enforced. But we deny enforcement to the provision of the Board's order requiring "the Respondents to refund to present and former employees, the work permit fees, initiation fees, dues and other monies the employees * * * have been required to pay." We think this remedy to be unduly harsh and penal in nature.

Our scope of review over the N.L.R.B.'s choice of the remedy to be applied is a narrow one. The standard is set forth in *Virginia Electric & Power Co.* v. *N.L.R.B.*, 319 U.S. 533, 540 (1943), in which the Supreme Court stated that the remedy selected "should stand unless it can be shown that the order is a patent attempt to achieve ends other than those which can fairly be said to effectuate the policies of the Act." See also *N.L.R.B.* v. *Seven-Up Bottling Co.*, 344 U.S. 344 (1953); *N.L.R.B.* v. *Warren Co.*, 350 U.S. 107 (1955). However, we have recognized in applying this principle that "the validity of reimbursement orders necessarily depends upon the peculiar circum-

[7] See note 2, *supra*.

stances of each particular case." *N.L.R.B.* v. *Adhesive Products Corp.*, 258 F. 2d 403, 409 (2 Cir. 1958); see *N.L.R.B.* v. *Shedd-Brown Mfg. Co.*, 213 F. 2d 163, 170–71 (7 Cir. 1954). And, as other courts have stated, "since powers conferred on courts of appeal by the Act are equitable in nature, they may be invoked only if the relief sought is consistent with the principles of equity." *N.L.R.B.* v. *Kingston Cake Co.*, 206 F. 2d 604, 611 (3 Cir. 1953). *N.L.R.B.* v. *American Dredging Co.*, 38 Labor Cases Par. 66,089, 3 Cir., January 8, 1960; *Local 357, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America* v. *N.L.R.B.* (D.C. Cir. February 18, 1960). Cf. *N.L.R.B.* v. *Local 60, United Brotherhood of Carpenters and Joiners of America, AFL–CIO* (7 Cir. January 22, 1960).

In the circumstances of this case it seems to us that the Board's remedy goes far beyond merely effectuating the policies of the Act. The remedy would require the employers to pay back not only the permit fees paid by non-union workers and members of other locals, but to reimburse long standing members of Local 545 for the dues paid by them. There is no evidence of any kind in the record to suggest that, but for the illegal conduct of the employers and the union, any of the Local 545 members would have resigned from the local and thereby avoided payment of union dues. Reimbursement of these employees represents a windfall to them at the expense of their employers.

Furthermore, even as applied to the members of other locals and those men not members of any union, we think the remedy is unfair. The order requires the employers, who at most received indirect financial benefit from the unlawful practices, to pay back all of the dues, permit fees and initiation fees collected by the union local. At the same time the primary bene-

ficiary of the unlawful conduct and undeniably the most culpable of the parties, Local 545, has been permitted to retain in its treasury the funds unlawfully exacted by it. In this respect the present case is distinguishable from *Virginia Electric & Power Co.* v. *N.L.R.B.*, *supra*, where the company was required to reimburse employees for dues it had itself unlawfully exacted through the company union as a condition of employment. Moreover, adoption of the reimbursement remedy in the present case was contrary to a policy announced by the N.L.R.B.'s General Counsel prior to the bringing of this proceeding. In spite of this stated policy declaration of a moratorium on the use of the Brown-Olds remedy, the General Counsel in his exceptions to the Trial Examiner's intermediate report specifically objected to the Examiner's refusal to impose the reimbursement remedy in this case. While, of course, the Board is not bound by the policy announced by the General Counsel, his statements and the probable reliance of the petitioners upon them should certainly have been given weight by the Board in deciding what remedy was appropriate.

Under these circumstances imposition of the reimbursement remedy seems to us inappropriate and arbitrary. Accordingly, the order of the Board is modified by striking out the provisions in paragraph 2, relating to reimbursement, and as thus modified, enforcement of the order is granted.

In the United States Court of Appeals
for the Second Circuit

No. 25613

MORRISON-KNUDSEN COMPANY, INC., WALSH CONSTRUCTION COMPANY, AND PERINI-QUEBEC, INC., JOINT VENTURERS DOING BUSINESS AS ROBINSON BAY LOCK CONSTRUCTORS; MORRISON-KNUDSEN COMPANY, INC., B. PERINI & SONS, INC., WALSH CONSTRUCTION COMPANY AND UTAH CONSTRUCTION COMPANY, A JOINT VENTURE AND SELBY DRILLING CORP., PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT.

AMENDED PROPOSED DECREE ENFORCING, AS MODIFIED, AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Before LUMBARD, Chief Judge, SWAN and FRIENDLY, Circuit Judges

This cause came on to be heard upon the petition of Morrison-Knudsen Company, Inc., Walsh Construction Company, and Perini-Quebec, Inc., Joint Venturers doing business as Robinson Bay Lock Constructors; Morrison-Knudsen Company, Inc., B. Perini & Sons, Inc., Walsh Construction Company and Utah Construction Company, a Joint Venture and Selby Drilling Corp. to review an order of the National Labor Relations Board dated March 31, 1959, and upon the Board's cross-petition to enforce said order. The Court heard argument of respective counsel on December 11, 1959, and has considered the briefs and transcript of record filed in this cause. On March 2, 1960, the Court being fully advised in the premises, handed down its decision granting enforcement of the Board's order as modified. In conformity therewith, it is hereby

Ordered, adjudged and decreed that the Petitioners Morrison-Knudsen Company, Inc., Walsh Construction Company and Perini-Quebec, Inc., Joint Venturers doing business as Robinson Bay Lock Constructors; Morrison-Knudsen Company, Inc., B. Perini & Sons, Inc., Walsh Construction Company and Utah Construction Company, a Joint Venture and Selby Drilling Corp., and their respective officers, agents, successors, and assigns, shall:

(1) Cease and desist from:

(a) Performing, maintaining, or giving effect to any hiring system, practice, or arrangement with Local 545, International Union of Operating Engineers, AFL–CIO, and International Union of Operating Engineers, AFL–CIO, which grants preference in employment to members of said Unions, or any other labor organization, or which requires employees and applicants for employment, as a condition of employment, to agree to pay or to pay, to said Local 545, or any other labor organization, any work permit fee or percentage of their earnings derived from such employment;

(b) Performing, maintaining, or giving effect to the provisions of any agreement, understanding, or arrangement with said Local 545, or any other labor organization of its employees, which unlawfully condition the employment of job applicants, or the retention of employees in employment, with the said Petitioner Companies upon clearance or approval by said Local 545 except as authorized in Section 8(a)(3) of the National Labor Relations Act (hereinafter called the Act);

(c) Encouraging membership in, or activities on behalf of the International Union of Operating Engineers, or any other labor organization, by giving preference in employment to members of such organ-

izations, or in any other manner discriminating against employees or applicants for employment in regard to their hire or tenure of employment, or other terms or conditions of employment, except as authorized in Section 8(a)(3) of the Act;

(d) In any other manner, interfering with, restraining, or coercing employees or applicants for employment in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act.

2. Take the following affirmative action which the Board has found will effectuate the policies of the Act.

(a) Publish at their expense in a newspaper of general circulation in Massena, New York, copies of the notices hereto marked, respectively, Appendix A for Joint Venture Petitioners in Case No. 3-CA-972, Appendix B for Joint Venture Petitioners in Case No. 3-CA-973, and Appendix C for Petitioner Selby Drilling Corp. in Case No. 3-CA-994. If any of the Petitioners establish a job office or offices in Massena, New York, or within the territorial jurisdiction of Local 545 prior to July 1, 1960, that Petitioner shall post copies of the notice applicable to it at such job sites. Copies of said notices, to be furnished by the Regional Director for the Third Region of the National Labor Relations Board (Buffalo, New York), shall be duly signed by authorized representatives of the Petitioner and shall remain posted for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by

the Petitioner to insure that said notices are not altered, defaced, or covered by any other material.

(b) The Joint Venture Petitioners in Case No. 3–CA–973 shall cause a copy of the notice (Appendix B) to be published at their expense in a newspaper of general circulation in Massena, New York;

(c) Notify the aforesaid Regional Director in writing, within ten (10) days of the date of this Decree what steps the Petitioners have taken to comply therewith.

———— ————, *Judge,*
United States Court of Appeals
for the Second Circuit.

———— ————, *Judge,*
United States Court of Appeals
for the Second Circuit.

FILED ----------.

APPENDIX A

NOTICE TO ALL EMPLOYEES PURSUANT TO

a Decree of the United States Court of Appeals enforcing, as modified, an order of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

> WE WILL NOT maintain or give effect to any hiring system, practice or arrangement with the INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL–CIO, or its LOCAL 545, which grants preference in employment to members of said unions or any other labor organizations, or which requires clearance or approval of employees or applicants for employment by said Unions as a con-

dition of employment, or which requires employees or applicants for employment, as a condition of employment to agree to pay, or to pay, to said LOCAL 545, or any other labor organization, any work permit fee or percentage of their earnings derived from such employment.

WE WILL NOT in any other manner, interfere with, restrain, or coerce our employees or applicants for employment in the exercise of rights guaranteed by Section 7 of the Act except to the extent that such rights may be affected by an agreement as authorized by Section 8(a)(3) of the Act

MORRISON-KNUDSEN COMPANY, INC., WALSH CONSTRUCTION COMPANY, and PERINI-QUEBEC, INC., d/b/a ROBINSON BAY LOCK CONSTRUCTORS, A Joint Venture

(Employer)

Dated _____ By _____
(Representative) Title

This notice must remain posted for 60 days from the date hereof and must not be altered, defaced, or covered by any other material.

APPENDIX B

NOTICE TO ALL EMPLOYEES
PURSUANT TO

a Decree of the United States Court of Appeals enforcing, as modified an Order of the National Labor Relations Board and in order to effectuate the poli-

cies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT maintain or give effect to any hiring system, practice or arrangement with INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, or its LOCAL 545, which grants preference in employment to members of said Unions or any other labor organizations, or which requires clearance or approval of employees or applicants for employment by said Unions as a condition of employment, or which requires employees or applicants for employment, as a condition of employment to agree to pay, or to pay, to said LOCAL 545, or any other labor organization, any work permit fee or percentage of their earnings derived from such employment.

WE WILL NOT in any other manner, interfere with, restrain, or coerce our employees or applicants for employment in the exercise of rights guaranteed by Section 7 of the Act except to the extent that such rights may be affected by an agreement as authorized by Section 8(a)(3) of the Act.

WE WILL cause a copy of this notice to be published at our expense in a newspaper of general circulation in Massena, New York.

MORRISON-KNUDSEN COMPANY, INC., B. PERINI & SONS, INC., WALSH CONSTRUCTION COMPANY, and UTAH CONSTRUCTION COMPANY, a Joint Venture

(Employer)

Dated_____ By_____

(Representative) (Title)

This notice must remain posted for 60 days from the date hereof and must not be altered, defaced, or covered by any other material.

APPENDIX C

NOTICE TO ALL EMPLOYEES

PURSUANT TO

a Decree of the United States Court of Appeals, enforcing, as modified, an Order of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT maintain or give effect to any hiring system, practice or arrangement with the INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, or its LOCAL 545, which grants preference in employment to members of said Unions or any other labor organizations, or which requires clearance or approval of employees or applicants for employment by said Unions as a condition of employment or which requires employees or applicants for employment, as a condition of employment to agree to pay, or to pay, to said LOCAL 545, or any other labor organization, any work permit fee or percentage of their earnings derived from such employment.

WE WILL NOT in any other manner, interfere with, restrain, or coerce our employees or applicants for employment in the exercise of rights guaranteed by Section 7 of the Act except to the extent that such rights may be

affected by an agreement as authorized by Section 8(a)(3) of the Act.

SELBY DRILLING CORP.
(Employer)

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof and must not be altered, defaced, or covered by any other material.

U. S. GOVERNMENT PRINTING OFFICE: 1959